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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14

15 UNITED STATES OF AMERICA,

) CASE NO. CR 14-00175 TEH

16 Plaintiff,

) UNITED STATES' OPPOSITION TO

17 v.

) DEFENDANT'S MOTION TO QUASH RULE

17(C) SUBPOENAS

18 PACIFIC GAS AND ELECTRIC COMPANY,

)

19 Defendant.

)

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21 **INTRODUCTION**

22 The United States opposes PG&E's motion to quash Rule 17(c) subpoena (Dkt. 562). The  
23 Court should deny the motion and order immediate production. The subpoena was authorized to require  
24 production in advance of trial. Trial starts tomorrow, and the government still does not have the  
25 subpoenaed data.

26 **BACKGROUND**

27 On February 24, 2016, the United States requested court approval to subpoena in advance of trial  
28 an electronic version of the April 6, 2011 letter, including metadata and attachments, that is at the heart  
U.S. OPP. TO DEFT'S MOT. TO QUASH  
CR 14-00175 TEH

1 of the obstruction charge, Count One, of the Superseding Indictment. Dkt. 312. Magistrate Judge  
 2 Maria-Elena James, to whom the Court had referred the matter, granted the government's request on  
 3 March 28, 2016. Dkt. 408 at 21. PG&E then petitioned this Court for relief from Judge James' order on  
 4 April 12, 2016. Dkt. 445. The Court denied the petition as untimely on May 10, 2016, and held that  
 5 "the Government was permitted to issue a Rule 17(c) subpoena for an electronic version of the April 6,  
 6 2011 letter pursuant to Crim. L.R. 17-2." Dkt. 526 at 3.

7 The very same day, the government issued the court-approved subpoena requiring production in  
 8 14 days per the local rule, or May 24, 2016. On May 23, 2016, the day before the compliance deadline,  
 9 PG&E moved to quash. Dkt. 526.

10 **ARGUMENT**

11 Rule 17(c)(2) requires a motion to quash to be made "promptly." Fed. R. Crim. P. 17(c)(2). The  
 12 day before compliance is required is not promptly. The Court should deny PG&E's motion for failure to  
 13 file promptly.

14 Rule 17(c)(2) authorizes a court to quash a subpoena "if compliance would be unreasonable or  
 15 oppressive." *Id.* But PG&E does not argue that the compliance would be unreasonable or oppressive;  
 16 indeed, the motion does not mention the words "unreasonable" or "oppressive." To the contrary, PG&E  
 17 concedes that it "has gathered the responsive documents and will be able to produce them promptly if  
 18 ordered to do so." Dkt. 562 at 3:14-15. Thus, the Court should deny PG&E's motion on the merits and  
 19 order same-day production.

20 The only argument PG&E raises in its motion to quash has already been rejected by this Court –  
 21 that the government's post-indictment use of Rule 17 is tantamount to grand jury abuse. This Court  
 22 declined "to be the first in this Circuit, or perhaps in the country, to hold that it is *per se* improper for the  
 23 government to issue Rule 17(c) subpoenas to a criminal defendant simply because the government  
 24 previously used the grand jury to investigate that defendant." Dkt. 584 at 4:10-13. Magistrate Judge  
 25 James held that the government had satisfied the factors under *United States v. Nixon*, 418 U.S. 683  
 26 (1974), to compel production prior to trial. Dkt. 408 at 21. That order stands. Dkt. 526.

27 Despite the subpoena having been authorized to compel production in advance of trial, the  
 28 compliance date of May 24, 2016, has long since passed. Trial starts tomorrow. The United States will

1 require some time for government computer forensics personnel to analyze the metadata. The United  
2 States respectfully requests that the Court order PG&E to provide the subpoenaed material within an  
3 hour of the Court's Order. As PG&E has confirmed it has the material at the ready, a forthwith order  
4 should not cause any hardship.

5 **CONCLUSION**

6 For the above reasons, the Court should deny PG&E's motion to quash and order immediate  
7 production, within an hour, of the electronic version of the April 6, 2011 letter, including metadata and  
8 attachments.

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10 DATED: June 13, 2016

Respectfully submitted,

11 BRIAN J. STRETCH  
12 United States Attorney

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14 /s/  
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16 Assistant United States Attorney  
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